IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No. 212 of 1984

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MAHESANA DIST. PANCHAYAT & 1 - Appellant(s)
Versus
YADAV NANDLAL GOKLADAS - Defendant(s)

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Appearance :
MS ARCHNA AMIN FOR MR KG VAKHARIA for Appellants
MR NS SHETH for Respondent

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 23/08/2006

ORAL JUDGMENT

1. Heard Ms.Archana Amin, learned counsel for the

appellants and Mr.N.S. Sheth, learned counsel for the respondent.

2. The appellants being aggrieved by the judgment and decree dtd.19/3/1984 passed in Regular Civil Appeal No.209 of 1982 by the Court of learned Extra Assistant Judge, confirming the judgement and decree dtd.30/4/1982 passed in Regular Civil Suit No.43 of 1977 by the learned 2nd Joint Civil Judge (SD), Mehsana have filed this appeal under section 100 of Code of Civil Procedure.

3. The short facts necessary for the disposal of the present appeal are that the respondent No.1 – original plaintiff was appointed as an Operator on Work Charge Basis in Public Works Department on 16/9/1957 and was thereafter promoted to the post of Mechanic in the department of Tubewell Branch, Patan on 11/12/1961 and since thereafter, he worked as mechanic upto June, 1976. The Executive Engineer, Tubewell Branch of District Panchayat, Mehsana and Deputy Engineer, Tubewell Branch of Sidhpur Taluka Panchayat made some preliminary inquiry against the respondent No.1 –

plaintiff on some anonymous application / complaint dtd.8/12/1971 wherein, it was alleged that the plaintiff has sold one Cooper Engines Crank Shaft with Fly-wheel on 20/11/1971. The plaintiff was, thereafter served with notice dtd.6/3/1972 which he replied on 18/3/1972. A departmental inquiry was proposed tobe made on the basis of the said application and the District Development Officer, Mehsana, after ordering a joint inquiry against as many as six persons inquired into the allegations, recorded findings of guilt and issued order of termination against the interest of the plaintiff. The plaintiff being aggrieved by the said order passed by the District Development Officer, took up the matter to the Development Commissioner, who in his turn, allowed the appeal and remanded the matter to the District Development Officer, Mehsana for decision afresh. This time again the District Development Officer recorded findings against the interest of the plaintiff. The plaintiff again preferred an appeal bearing No.177 of 1976 before the Development Commissioner, Gandhinagar, but this time, the appeal was dismissed vide order dtd.27/8/1976. The plaintiff, thereafter, challenged the order passed by the District Development Officer and confirmed in

appeal by the Development Commissioner, by filing Civil Suit No.43 of 1977. The plaintiff submitted before the Court that the Disciplinary Authority in case of the present plaintiff, who was a Mechanic, would be Executive Engineer and as no inquiry was made by the Executive Engineer or no order for a joint inquiry was made by the Executive Engineer under Rule 9 of the Gujarat Panchayats Service (Discipline and Appeal) Rules, 1964, the inquiry conducted by the District Development Officer, who otherwise was an appellate forum, was bad, void ab-initio and any order passed by the said officer could not act to prejudice of the plaintiff. It was also submitted that different yardsticks were applied for awarding different punishments and lastly it was submitted that the termination as punishment was shockingly disproportionate to the alleged misconduct, the plaintiff prayed for a decree in his favour for his reinstatement along with the full back wages and consequential relief.

4. The defendants, after notice appeared before the learned trial judge and contested the suit on all possible terms. It was submitted that as many as six persons were to be

jointly tried; in case of 5 persons, the Executive Engineer would have been the Disciplinary Authority, while in case of sixth who was a Mechanical Supervisor, the District Development Officer alone would have been the competent authority. The submission was that the District Development Officer if made an order under Rule 9 of the above referred Rules and directed inquiry and ultimately passed a final orders, then in absence of a prejudice, the order could not be challenged on the question of want of jurisdiction. It was also submitted that the present plaintiff was found to be the kingpin in the matter of theft and sale of Cooper Engines Crank Shaft with Fly-wheel, therefore, the order of termination was appropriate and was not shockingly disproportionate. It was also submitted that the inquiry conducted by the District Development Officer could not be held to be bad or void ab-initio in the present set of the circumstances.

5. After casting the issues, the learned Trial Judge granted appropriate opportunity of leading evidence to the parties. After hearing the parties, learned Trial Court decreed the suit, it declared the order of termination to

be void ab-initio and directed that the plaintiff would be deemed to be in service from the date of termination till the date of joining. He would also be entitled to the back wages and to all consequential reliefs to which he would have been entitled, if he had continued in service. The judgment not being palatable to the appellants, was challenged before the First Appellate Court and as the appeal stood dismissed, the dissatisfied defendants are before this Court.

6. The appeal has been admitted for hearing the parties on the following substantial questions of law;

(i) Whether in the facts and circumstances of the case, the penalty of dismissal from service imposed upon the respondent No.1 is excessive?

(ii) Whether in the facts and circumstances of the case, the lower courts erred in holding that the inquiry held and completed by the D.D.O. was improper and illegal and if so, what is its effect on the final order passed in the disciplinary proceedings?

7. Ms.Amin, learned counsel for the appellants referring to

Rule 9 submits that an order for joint inquiry can be made by the higher or highest authority, in case one of the person cannot be tried by the lowest authority. The submission is that in case of the present plaintiff, the Executive Engineer would have been the competent authority, but in case of Mechanical Supervisor, the District Development Officer alone would have been the competent officer. According to her, if the District Development Officer vide Ex.46 passed an order for a joint inquiry and the said order was not challenged by the present plaintiff at any point of time, then the such order would stand valid. Placing reliance upon the judgment of the Hon'ble Supreme Court in the matter of *Balvirchand Vs. Food Corporation of India,* reported in *1996 (3) S.C.C. 371* and the Single Bench Judgement of this Court in the matter of *Tushar D. Bhatt Vs. State of Gujarat,* reported in *2004(3) G.L.H. 150*, it was submitted that if higher authority in hierarchy of the system had conducted inquiry, then the such inquiry cannot be held to be bad.

8. Mr.Sheth, learned counsel for the respondent on the other hand submitted that in the present case the

Executive Engineer who was the competent authority / disciplinary authority for the present plaintiff was obliged to make an order for joint trial of all six persons. According to him, if the order has not been made by the Executive Engineer, then the order passed by the District Development Officer would not enure to the benefit of defendants. According to him, the trial was vitiated and even otherwise the punishment awarded to the plaintiff was shockingly disproportionate.

9. I have heard the parties at length.

10. Rule 9 of the Gujarat Panchayats Service (Discipline and Appeal) Rules, 1964 provides for Joint Inquiry, where two or more members of the Panchayat Service are concerned in any matter relating to disciplinary action, the disciplinary authority shall make an order directing whether the action against all of them should be taken in a common proceedings, or whether separate action should be taken against each of the members. In both the cases, the procedure, laid down in Rule 7 or Rule 8, as may be applicable, shall be followed. Rule 7 relates to procedure for imposing major penalties, while

Rule 8 relates to procedure for imposition of minor penalties.

11. According to Ms.Amin, if the inquiry is in relation to the persons whose disciplinary authority are different in hierarchy and an order by the officer higher in rank is made, then such an inquiry against another employee whose disciplinary authority is lower in rank, would not be bad. While on the other hand, Mr.Sheth submits that such an order for joint inquiry is to be made by the officer lowest in rank who also happens to be disciplinary authority for some delinquents.

12. A fare understanding of Rule 9 would make it clear that an order for joint inquiry is to be made by the disciplinary authority. Undisputedly, an order for joint inquiry in relation to all six delinquents could not be made by the Executive Engineer, because sixth delinquent could not be subjected to inquiry by the Executive Engineer, as sixth delinquent was subject to disciplinary action by the District Development Officer. On the other hand, all six would be subjected to an inquiry or joint inquiry by the District Development Officer, who was otherwise competent to make an

inquiry against the six persons. True it is that the District Development Officer, in case of the present plaintiff would have been the appellate authority, but in the given set of the facts, it would be too much to expect that such an order of joint inquiry could be made by the Executive Engineer, who had no jurisdiction to subject the sixth person to departmental inquiry.

13. If Rule 9 is read in its toughest technical sense, it would lead to an absurdity. It is trite to say that any provision of law must be understood on the touchstone of logic and rationality. The touchstone for holding a Rule to be valid or invalid would be the logic and not the words employed. It would also be trite to say that the law would ordinarily be held to be valid, unless it runs contrary to the provisions of the Constitution. It is settled law that in a given case, the Court would lean in favour of the validity of the provisions and ordinarily not in declaring that the provisions are invalid if by proper interpretation or reading down the law, it can be held valid.

14. If in the present case, the words “disciplinary authority”

are read as the District Development Officer for the sixth delinquent and Executive Engineer for the other five, then the conciliation would be impossible. Under the circumstances, it must be held that the person competent to subject senior most person to inquiry would be the authority to make an order under Rule 9 for the joint inquiry.

15. In the matter of Balbirchand (Supra) the facts were that a joint inquiry was conducted against all delinquents officially. In the hierarchy the highest competent authority who could take disciplinary action against delinquent was none other than the Managing Director of the Corporation. In normal circumstances, the Managing Director being an appellate authority could not pass order of punishment so as to enable the delinquent - employee to avail of right of appeal. The Supreme Court observed that an authority lower than the appointing authority cannot take any decision in the mater of disciplinary action. The Final words of the Supreme Court were that there is no prohibition in law that the higher authority should not take decision or impose penalty as the preliminary authority in the matter

of disciplinary action vest in some Authority subordinate to him. Similarly, in the matter of Tushar D. Bhatt (Supra), this Court referring to Gujarat Civil Services (Discipline and Appeal) Rules, 1977, especially Rule Nos.7 and 21 observed that there is no prohibition in law that an authority higher than the appointing authority cannot take a decision to impose a penalty.

16. Even otherwise, on the construction of Rule 9, I must hold that the authority to pass order for joint inquiry in case like present would vest in the District Development Officer, because the Executive Engineer could not order for joint inquiry by him against a person who was not subject to his jurisdiction.

17. In view of the discussion aforesaid and the legal position, the question No.2 must be answered in favour of the appellants and it must be held that the inquiry conducted and concluded by the District Development Officer was neither improper, nor illegal, nor was void ab-initio.

18. So far as the question of punishment is concerned, the

position of the Civil Court would not be that of an appellate or revisional authority. In a given case, departmental appeal or revision the competent authority may exercise powers by reducing the punishment so awarded, but in the Civil Court, the question would altogether be different. The Civil Court would not be entitled to look into the question of punishment, except on the ground that the punishment so awarded was shockingly disproportionate. The Civil Court cannot say that if the Presiding Officer of the Civil Court was in the Chair of the Disciplinary Authority, he would have awarded lesser punishment. The exercise of power to award punishment must be left to the discretion and jurisdiction of the departmental authority. They are the best judges in the given circumstances. They know that in the given set of the circumstances, what punishment must be awarded. In the present case, the findings recorded by the District Development Officer show that the present plaintiff was the sole delinquent in committing theft of or removal of Cooper Engine Crank Shaft with Fly-wheel and selling the same, while the others at least did not commit the offence of theft. If the plaintiff, in whom the department earlier reposed

confidence, was not worth credence, then obviously the punishment of dismissal by asking the delinquent to exit from the service would not be harsh punishment. A person who commits theft and is found guilty cannot be continued in service on the ground that yet another opportunity to prove reliability must be provided. One can understand in a criminal case, where the Court in the given set of the circumstances may award lesser punishment, but in case case of departmental inquiry, on the facts, if the authorities are satisfied that a thief cannot be continued in service, then except the removal from service, no other punishment would be appropriate. The question No.1 is also tobe answered in favour of the appellants and it must be held that the punishment of dismissal was not disproportionate to the misconduct.

19. The appeal stands allowed with no order as to costs.

20. After filing of the Second Appeal, this Court had directed that the present appellants should reinstate the plaintiff in service, the appellants accordingly so did. During the pendency of this appeal, the plaintiff attained age of superannuation and retired from the service. The

question now is that whether order for recovering needs tobe passed. In my opinion at this stage, the question of equity would also come. The respondent plaintiff had worked with the appellants for long many years and for the services rendered by him, if he has been paid something, under the circumstances, it would be just, equitable and proper to order that though the suit is dismissed, but from the date of reinstatement of the respondent plaintiff upto the date of retirement if any money has been paid to him, the same shall not be recovered back from the plaintiff. The appeal deserves to and is accordingly allowed, but, however with the directions aforesaid. Let a decree be framed accordingly.

(R.S.GARG,J.)

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